

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION

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U.S. DISTRICT COURT  
N.D. OF ALABAMA

UNITED STATES OF AMERICA )

v. )

RICHARD M. SCRUSHY, )

Defendant. )

Case No. CR-03-BE-0530-S

**MOTION OF THE UNITED STATES  
TO VACATE ORDER SETTING HEARING**

Comes now the United States of America, by and through its counsel, Alice H. Martin, United States Attorney for the Northern District of Alabama, and moves this Court to vacate its order setting a hearing on the defendant's *Motion to Modify the Court's Restraining Order of November 3, 2003*. As grounds therefor, the Government states as follows:

1. That on November 26, 2003, the defendant filed his motion seeking to modify the Court's Restraining Order of November 3, 2003. Following submission of briefs by both parties, this Court held a conference with counsel on December 11, 2003, to discuss the defendant's motion.

2. That during that telephone conference, this Court informed counsel for the defendant that it was clear under Supreme Court and Eleventh Circuit case law that the defendant did not have a *right* to a hearing; rather, it was within the court's discretion as to whether a hearing would be held. This Court further advised defense counsel that it was unclear what relief the defendant was seeking in his motion, and that if the Court did have a hearing, the defendant would first be required to specifically list assets that he claims fall outside the scope of the Indictment. Defense counsel acknowledged that obligation.

3. That on December 19, 2003, this Court entered its order setting the defendant's motion to modify for a hearing; that hearing is presently scheduled for Thursday, January 22, 2004, at 1:30 p.m.

4. To date, the defendant has refused to specifically identify for the United States or this Court what properties he claims were wrongfully restrained and his support for that claim. Furthermore, lead defense counsel recently informed counsel for the government that the defendant would **not** identify any specific assets **until the hearing**.

5. The United States has repeatedly requested, both orally and in writing, that the defendant identify any properties he claims were wrongfully restrained and on what basis; the defendant has repeatedly refused to do so. It now appears that the defendant's plan is to leave both this Court and the United States "in the dark" until the last possible moment in an effort to gain the release of all properties subject to the Court's Restraining Order of November 3, 2003.

6. The Restraining Order of November 3, 2003, was based upon this Court's finding of probable cause to believe that the properties in question were subject to forfeiture to the United States. Although not required to do so, this Court, in its discretion, has afforded the defendant a hearing to challenge the restraint of assets provided those assets were specifically identified in advance. The defendant has deliberately refused to comply with the Court's prerequisites. The United States strongly objects to any attempt by the defendant that would prevent the government and this Court from being adequately prepared for a meaningful hearing on this or any other issue in this case.

Wherefore, based on the foregoing the United States respectfully requests this Court to vacate the order setting a hearing for January 22, 2004, and that the hearing on the defendant's motion to modify be cancelled.

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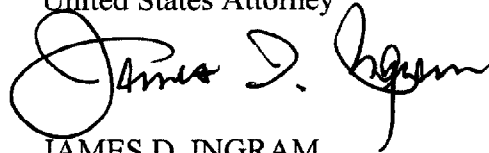
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Respectfully submitted this 15<sup>th</sup> day of January, 2004.

ALICE H. MARTIN  
United States Attorney

A handwritten signature in black ink, appearing to read "James D. Ingram". The signature is fluid and cursive, with the first name "James" being the most prominent.

JAMES D. INGRAM  
Assistant United States Attorney  
Northern District of Alabama

A handwritten signature in black ink, appearing to read "Richard C. Smith". The signature is cursive and somewhat stylized, with the last name "Smith" being clearly legible.

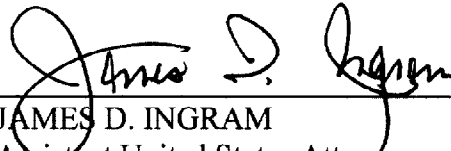
RICHARD C. SMITH  
Deputy Chief, Fraud Section  
Criminal Division  
U.S. Department of Justice  
Washington, D.C.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been served upon the following by telephone facsimile and by United States mail on this 15<sup>th</sup> day of January, 2004:

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A handwritten signature in black ink, appearing to read "James D. Ingram", is written over a horizontal line.

JAMES D. INGRAM  
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